



# Yale Law School

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State of Connecticut  
Department of Housing  
505 Hudson Street  
Hartford, CT 06106-7106  
Attn: Michael Santoro, Acting Commissioner  
By Federal Express  
By Facsimile to (860) 706-5741

Dear Commissioner Santoro,

I write in connection with the Town of Westport's pending application for a moratorium pursuant to section 8-30g(l) of the Connecticut General Statutes. I write on my own behalf and on behalf of my client, the Open Communities Alliance ("OCA"). OCA is a Connecticut-based civil rights organization that promotes access to opportunity for all people through education, organizing, advocacy, research, and partnerships. OCA and I strongly support the granting of moratoria when towns meet the requirements set forth in Section 8-30g of the Connecticut General Statutes and the associated regulations. As you know, the moratorium provision set forth at Section 8-30g(l) awards points for particular developments that meet the statutory criteria, including application of deed restrictions of minimum duration that set out minimum affordability requirements. This letter describes my analysis of Westport's application and its calculation of housing unit-equivalent (HUE) points.

I. Without further information from the Town, no points are allocable to Rotary Centennial House.

A. The Town has not established the duration of the deed restriction as required by Section 8-30g(a)(6).

Section 8-30g(a)(6) of the Connecticut General Statutes requires set-aside units to be deed-restricted for a period of no less than forty (40) years. In the case of Rotary Centennial House, as set forth at Volume 2923, Page 343 of the Land Records, the Declaration and Agreement of Restrictive Covenants expires when "the Mortgage Loan is fully paid." The Town's application does not include the term of the mortgage or establish whether the mortgage can be prepaid so as to cut short the deed restriction.

## II. The Town miscalculates the points allocable to the redevelopment of Sasco Creek, Hale's Court, and Hidden Brook.

These three developments are all redevelopment projects. Section 8-30g(l)8 requires that points be subtracted for any units that existed prior to redevelopment. The lost points are calculated just as new points are calculated, which requires that the Town document the affordability levels and other restrictions allocable to the units that existed prior to redevelopment. Unfortunately, Westport has provided no documentation related to the demolished units and it is very difficult to decipher, based on the insufficient information provided, to know how many, if any, points are allocable to these three developments. I do my best below.

### A. Sasco Creek

In the case of Sasco Creek, the Town attempts to claim points for building two (2) new units that were in fact replacements for two (2) units lost to fire. The narrative and the table at Tab C.8 acknowledge that the Town is not entitled to points for these two (2) units as they simply replaced units that predated 1990. Unfortunately, the table set forth at Tab B.1 claims points for these units. These five (5) points must be deducted from Westport's claimed total.

In addition, according to Attorney Bamonte's cover letter, only fourteen (14) of the units in the redeveloped Sasco Creek are affordable, as defined in Section 8-30g. I assume, therefore, that forty (40) are market-rate. The development is, therefore, twenty-six percent (26%) affordable. Thus, the development does not constitute a "set-aside development," and the market rate units are not eligible for moratorium points. Another four and one-quarter (4.25) points must be deducted from Westport's claimed total. Notwithstanding Attorney Bamonte's cover letter, the restrictive covenant included in the exhibits specifies that just thirteen (13) units are market-rate. If Attorney Bamonte's cover letter is simply incorrect, these points may be included.

### B. Hale's Court

The original Hale's Court consisted of forty (40) units. The new Hale's Court consists of seventy-eight (78) units.

Westport's zoning code requires that a portion of the new Hale's Court be dedicated as senior housing. On information and belief, forty (40) of the units in the new Hale's Court are senior housing. Provided that they are limited to tenants whose income does not exceed eighty percent (80%) of the statewide median, these units are entitled to one-half point per unit, or twenty (20) total HUE points.<sup>1</sup> The restrictive covenant establishes that

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<sup>1</sup> Because so many of Westport's HUE points come from redevelopment projects that actually replaced affordable family units with market rate units and/or elderly units, it is not the case that over sixty percent (60%) of the units that are the subject of this application are not limited to elderly tenants. Using the net numbers, at most forty percent (40%) of the units are family. As a result, the provision regarding one point

some portion of the seventy-eight (78) units are available at sixty percent (60%) of area median income, which exceeds eighty percent (80%) of statewide median income, rendering these units “market rate” for the purposes of this analysis. Twenty-six (26) of the units are available to families whose income does not exceed forty percent (40%) of statewide median income, resulting in sixty-five (65) HUE points. Twelve (12) units are available to families whose income does not exceed eighty percent (80%) of statewide median income, resulting in twenty-one (21) HUE points.<sup>2</sup> Assuming that none of the senior units is market-rate units, the total points allocable to the new development – before deducting the points allocable to the original development – is one hundred and twenty-six (126) HUE points. Notably the application is not at all clear that all of the elderly units are restricted to tenants whose income does not exceed eighty percent (80%) of the statewide median. As a result, it is likely that my calculation “double counts” units and overestimates the points to which Westport entitled.

The original units, predating 1990, were not restricted to elderly tenants and, in fact, all of the units had at least two bedrooms. All of the original units were restricted to tenants whose income did not exceed eighty percent (80%) of the statewide median. As a result, the Town must deduct from its calculation the sixty (60) points allocable to the lost units. The net points allocable to Hale’s Court is then sixty-six (66) HUE points, not eighty-three (83) as the Town claims.

In brief, the Town claims that all of the elderly units that exist today replace elderly units that existed in 1990, but the original Hale’s Court had no such restriction. In addition, the Town assumes that any market-rate units at the new Hale’s Court replace units that were also market rate but this is simply not possible. The Town must revisit the HUE points allocable to the original Hale’s Court, tabulate the points allocable to the new Hale’s Court, and calculate the net point gain or loss, as the case may be.

### C. Hidden Brook

It is unclear why the Town believes it is entitled to points for Hidden Brook. By describing the new units as “replacement units,” it acknowledges that thirty-five (35) affordable units existed prior to 1990. In the redeveloped complex there are thirty-nine (39) units, only four (4) of which are affordable as defined in Section 8-30g. The rest are deed-restricted, but at a level considered market rate for the purposes of the statute. As a result, the Town lost thirty-one (31) affordable units and ought to deduct points. Because the Town includes no details about the original housing development, it is unclear what the total number of deducted points ought to be. It is clear, however, that the Town is not entitled to six (6) points for this redevelopment.

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elderly units set forth at Section 8-30g(l)(6) of the Connecticut General Statutes does not apply and the elderly units are allocated one-half point per unit.

<sup>2</sup> The affordability requirements in the zoning approval do not match those in the affordability plan. The Town uses the more favorable (for the purposes of HUE points calculation) zoning approval requirements. I use those as well but note that fewer points would be allocated if the affordability plan were instead used.

III. Units at Bradley Center, Saugatuck Center, Bedford Square, and Coastal Point are not eligible for moratorium points.

Moratorium points are available only for units located “affordable housing developments.”<sup>3</sup> These four developments are not “affordable housing developments,” as defined in Section 8-30g. Affordable housing developments must be either “assisted housing” or “set-aside developments.” These four developments are not assisted housing. They are affordable housing developments only if they meet the definition of a set-aside development. At least thirty percent (30%) of the units in a set-aside development must be deed-restricted affordable housing. These four developments do not qualify as set-aside developments because, in each of them, the percentage of affordable units is less than thirty percent (30%). Because section 8-30g(l) limits moratorium point eligibility to units located in affordable housing developments, units in those developments are not eligible for moratorium points. As a result, forty-nine and one-quarter (49.25) points should be deducted from Westport’s claimed total.

IV. Westport has not included documents sufficient to establish ongoing compliance with statutory and regulatory requirements.

The statute clearly requires evidence of affordability compliance as of the date of the moratorium application. Unfortunately, the application is incomplete and confusing in some respects. In many cases, the Town fails to include a deed restriction, thus failing to establish that the units are, in fact, deed-restricted as required by Section 8-30g(6). In Tab 4 the Town includes several pages setting out income limitations applicable to certain HUD programs, but not to 8-30g. The affordability plans provided for Bradley Commons and Bedford Square are incomplete. Even where the affordability plans are provided in full, the Town has included no evidence that these plans were recorded on the land records or of ongoing compliance with those plans. None of the annual reports required by Section 8-30h is included. In connection with home ownership projects, we are not told what the sales prices were or are. All of these documents should be on file with the Town and we encourage the Department to request them, as permitted by 8-30g-6(g) of the Regulations of Connecticut State Agencies.

V. The Town’s public notice was defective.

The Town has included at Tab D my letter challenging the Town’s public notice. In order to properly provide Westport residents and others an opportunity to be heard, the notice should have included a description of public participation opportunities set out in the statute and regulations.

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<sup>3</sup> “The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points.” C.G.S. § 8-30g(l)(4)(A).

Thank you for your attentive review of Westport's application. I have now reviewed every moratorium application that has been submitted since 2014 and have submitted formal written comments regarding most of them. In at least one case, the application was unassailable and, as a result, I did not submit comments. By contrast, of the applications I have reviewed, this is one of the least carefully compiled and documented.

We congratulate the Town on the units of housing it has developed. If you have any questions, please call me at (203) 432-4022 or e-mail me at [anika.lemar@yale.edu](mailto:anika.lemar@yale.edu).

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Singh' followed by a stylized flourish.

Anika Singh Lemar